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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Marc Gianotti
Application No.: 10/674729
Filed: September 30, 2003
For: Steats with Elevations at Selected Crossing Points
Examiner: Bruce Snow
Group Art Unit: 3728

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Docket No.: S63.2-13017-US04

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Following please find a 7 page Reply Brief in addition to this 1 page Facsimile Transmittal Letter.

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Respectfully Submitted,

VIDAS, ARRETT & STEINKRAUS, P.A.

Date: December 19, 2006

By: Jennifer L. BussJennifer L. Buss
Reg. No. 57321

6109 Blue Circle Drive, Suite 2000
Minnetonka, MN 55343-9185
Telephone: (952) 563-3000
Facsimile: (952) 563-3001

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Marc Gianotti
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REPLY BRIEF

This is a Reply Brief for the above-identified application in response to the Examiner's Answer of October 27, 2006.

A Notice of Appeal was filed in this case on July 17, 2006. An Appeal Brief was filed July 31, 2006. The fees required under §1.17(c) for filing this brief were addressed in the Notice of Appeal. The Commissioner is authorized to charge Deposit Account No. 22-0350 for any other fees which may be due with this Appeal.

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(B) Status of Claims

Claims 1-30, 47-65 and 69-75 have been cancelled. Claims 66-68 and 76 are allowed. Claim 42 is objected to as being dependent upon a rejected base claim. Claims 31, 32, 40, 41 and 43-46 are pending, have been rejected and are the subject of this appeal.

Claims 31, 32, 40, 41 and 43-46 have been finally rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 5,709,713 to Evans. Claims 31, 32, 40, 41 and 43-46 have been finally rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 5,725,547 to Chuter.

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(C) Grounds of Rejection to be Reviewed on Appeal

1. Whether the Examiner erred in rejecting claims 31, 32, 40, 41 and 43-46 under 35 U.S.C. §102(e) as being anticipated by U.S. 5,709,713 to Evans.

2. Whether the Examiner erred in rejecting claims 31, 32, 40, 41 and 43-46 under 35 U.S.C. §102(e) as being anticipated by U.S. 5,725,547 to Chuter.

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(D) Argument

1. The Examiner erred in rejecting claims 31, 32, 40, 41 and 43-46 under 35 U.S.C. §102(e) as being anticipated by U.S. 5,709,713 to Evans.

Applicant reiterates the arguments made in the Appeal Brief filed July 31, 2006 (Appeal Brief, pages 5-7).

2. The Examiner erred in rejecting claims 31, 32, 40, 41 and 43-46 under 35 U.S.C. §102(e) as being anticipated by U.S. 5,725,547 to Chuter.

In the Examiner's Answer, the Examiner asserted that the claims do not state that "the windings are of a substantially constant pitch is [sic] over the entire entire [sic] length of the stent" (Examiner's Answer, page 5). Applicant asserts that independent claims 31 and 43 do recite a substantially constant pitch "over the entire length" of the flexible braided tubular wall of the stent. The claims and the specification of the instant application support Applicant's assertion that Examiner is in error.

The MPEP requires that "[d]uring patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification" (MPEP 2111). Applicant asserts that the pending claims implicitly state that the wire has a substantially constant pitch over the entire length of the stent. Instant independent claims 31 and 43 recite "a stent ... including: a flexible self-expanding braided tubular wall." The braided tubular wall comprises "at least one first wire helically wound at a substantially constant first pitch and at least one second wire helically wound at a substantially constant second pitch different from the first pitch" (instant independent claims 31 and 43). Because the tubular wall of the stent is

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formed by helically wound wires, the helically wound wires necessarily extend the entire length of the stent. Because the helically wound wires extend the entire length of the stent, the wires have a substantially constant first/second pitch the entire length of the stent.

This interpretation of the claim language is supported by the written description of the instant application. As discussed in the application, the stent is formed by intertwining the wires with a predetermined braiding angle (Application, page 8). Thus, wires extend the entire length of the stent. Therefore, the wires have the predetermined braiding angle the entire length of the stent. This is illustrated, for example, by Fig. 1 of the instant application, provided on page 9 of the Appeal Brief.

In summary, Applicant asserts that based on the specification and the claims themselves, the broadest reasonable interpretation of the instant independent claims is that the first wire and the second wire have a substantially constant first/second pitch over the entire length of the stent and Examiner's assertion to the contrary is in error.

In the Examiner's Answer, Examiner also asserted that two substantially different pitches are "substantially constant" because one pitch is used over a greater percentage of the length of the stent (Examiner's Answer, page 5). In its essence, the Examiner's argument is basically asserting that it is the *average pitch* of the wire that is substantially constant over the length of the stent. This limitation, "average," is not recited in instant independent claims 31 and 43 and is inconsistent with the specification of the instant application, which does not discuss either the concept of "average" or the concept that "substantially constant" means that the wire has a pitch over a substantial portion of its length. Therefore, Examiner's assertion is in error.

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In conclusion, Applicant requests reversal of Examiner's rejection because the broadest reasonable interpretation of the independent claims is that the first wire and the second wire have a substantially constant first/second pitch over the length of the stent. Alternatively, Applicant requests reversal of Examiner's rejection because Examiner's broadest reasonable interpretation of "substantially constant" is inconsistent with the claims and specification of the instant application.

CONCLUSION

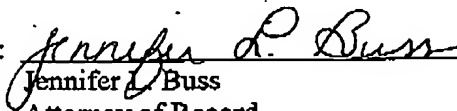
Instant claims are parentably distinct over Evans and over Chuter. Consequently reversal of the rejections is respectfully requested.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS, P.A.

Date: December 19, 2006

By:



Jennifer L. Buss
Attorney of Record
Registration No. 57321

Suite 2000
6109 Blue Circle Drive
Minnetonka, MN 55343-9185
Phone: (952) 563-3000
Facsimile: (952) 563-3001

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